

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MERITT BUFFALO EVENTS	§	
CENTER, LLC, D/B/A BUFFALO	§	
VALLEY EVENT CENTER,	§	
	§	
VS.	§	CIVIL ACTION NO. 3:15-CV-03741-D
	§	
CENTRAL MUTUAL INSURANCE	§	
COMPANY, DAVID MASSEY AND	§	
STEVE CAGLE,	§	
	§	
VS.	§	
	§	
XERNIE JOE MERITT	§	

DEFENDANTS' RESPONSE TO PLAINTIFF/COUNTER-DEFENDANT MERITT
BUFFALO EVENTS CENTER, LLC d/b/a BUFFALO VALLEY EVENT CENTER
AND THIRD-PARTY DEFENDANT XERNIE MERITT'S
MOTION FOR LEAVE TO FILE ANSWER

COME NOW Defendants Central Mutual Insurance Company ("Central"), David Massey and Steve Cagle and file this Response to *Plaintiff/Counter-Defendant Meritt Buffalo Events Center, LLC d/b/a Buffalo Valley Event Center and Third-Party Defendant Xernie Meritt's Motion For Leave To File Answer* [Doc#34] (hereinafter referred to as "Plaintiff's Motion for Leave"), and would respectfully show the Court the following:

I.
XERNIE MERITT'S ORIGINAL ANSWER

1. Defendants are not opposed to Third-Party Defendant Xernie Meritt filing an original answer at this time. Plaintiff's counsel previously agreed to accept service for Xernie Meritt and to file an answer on his behalf, but no agreement was in place among the parties regarding a set due date for his answer.

II.
MERITT BUFFALO'S AMENDED ANSWER

2. Defendants oppose the late filing of an answer by Meritt Buffalo. Its answer to Central's amended counterclaim [Doc. #32] was due within 14 days of July 5, 2016, pursuant to Federal Rule of Civil Procedure 15(a)(3), which means its deadline was July 19, 2016. Plaintiff's counsel did not make an effort to file a late answer until *over three weeks after the deadline* when he contacted Defendants' counsel on August 10, 2016. *See Certificate of Conference* in Plaintiff's Motion for Leave to File Answer [Doc. #34]. Meritt Buffalo's delay was unreasonable and Meritt Buffalo has not adequately demonstrated excusable neglect.

3. Defendants should be entitled to rely on the assumption that Meritt Buffalo intended to and did admit the matters set forth in Central's Amended Counterclaim for failure to deny them in accordance with Federal Rule of Civil Procedure 8(b)(6). *See, e.g., Harris Methodist Fort Worth v. Sales Support Servs., Inc.*, No. 4:01-CV-567-Y, 2006 WL 6012872, at *5 (N.D. Tex. Sept. 29, 2006) (granting summary judgment on basis that averments were deemed admitted when party failed to timely reply to counterclaim and party had failed to demonstrate excusable neglect). This is especially necessary considering the parties are on the eve of mediating this case on September 12, 2016 and Defendants are in the process of preparing a position statement for the mediator. The admitted matters are material to Defendants' position.

PRAYER

For these reasons, Defendants respectfully requests the Court to deny leave to late file the Amended Answer of Plaintiff/Counter-Defendant Meritt Buffalo Events Center, LLC d/b/a Buffalo Valley Event Center and to grant leave to file the Original Answer of Third-Party

Defendant Xernie Meritt. Defendants pray for such other and further relief, both at law or in equity, to which they may be justly entitled.

Respectfully submitted,

EKVALL & BYRNE, L.L.P.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure on all counsel of record on this 2nd day of September, 2016.

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